IN THE HIGH COURT OF DELHI AT NEW DELHI

FAO 262/2001

SHRI KAMAL KISHORE ..... Appellant

! through: Mr.Bharat Sachdeva, Advocate

VERSUS

$ SHRI CHARANJIT SINGH & ORS. ..... Respondents

^ through: Mr.R.K.Tripathi, Adv. for R-3

RESERVED ON : 15.3.2007

DATE OF DECISION: 17.4.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. Kamal Kishore, aged 44 years was injured in a road accident on 28.2.91.

2. He filed a claim petition under Section 140 and 166 of the Motor Vehicles Act, 1988 claiming compensation in sum of Rs.7,00,000/- on account of the injuries suffered by him in the said road accident. Later, by way of the amendment he enhanced the claim to Rs.20,00,000/-.

3. Vide award dated 8.2.01, learned Tribunal awarded a sum of Rs.4,23,701/- to him. Break-up of the compensation awarded by the Tribunal is as follows:

i) Dressing Charges	.....	Rs.7,000/-
ii) Physiotherapy Charges	.....	Rs.3,420/-
iii) Attendant Charges	.....	Rs.11,102/-
iv) Treatment Expenses	.....	Rs.13,792/-
v) Medicinal Charges	.....	Rs.22,387/-
vi) Special Diet	.....	Rs.9,000/-
vii) Conveyance Charges	.....	Rs.3,400/-
viii) Special Shoes	.....	Rs.3,600/-
viii) Loss of Income	.....	Rs.1,50,000/-
ix) Pain and Suffering	.....	Rs.50,000/-
x) Permanent Disability	.....	Rs.1,50,000/-
Total		Rs.4,23,701/-

4. Aggrieved by the compensation awarded by the Tribunal, injured/appellant has filed the present appeal praying for enhancement of compensation.

5. Since fairness of the compensation assessed is the only matter which was debated by the learned counsel for the parties, I need to note only such facts as are relevant for determination of the said issue.

6. Date of accident is 28.2.91. Age of the appellant as on the date of the accident is 44 years. He claimed to be selling sarees from a small shop under the name of Kamal Deep Sarees. He claimed an income of Rs.5,000/- per month at the time of the accident.

7. Period of treatment spreads over different dates, spanning around 20 months. He was admitted in LNJP Hospital on the date of the accident and was discharged in the last week of April 91. Thereafter, he was treated by three doctors, namely, Dr. Shekhar Aggarwal, Dr. H.U. Nagar and Dr. Mukesh Jain. Appellant claimed to have undergone six operations.

8. Details of injuries suffered by the appellant are as follows:

i) Crush injury on left thigh and foot.

ii) Compound fracture of left ankle and left foot.

iii) Closed fracture of right femur and right tibia.

iv) Lacerated wound on left ankle and joint.

9. As a result of the said injuries, right leg of the injured was shortened by one inch and he has suffered a permanent disability of 55%.

10. Since appellant is aggrieved by the amount of compensation awarded by the Tribunal under various heads, I shall deal with each head separately.

11. Before proceeding with the compensation assessed by the Tribunal under each of the heads, I note that most of the bills, prescriptions etc are exhibited as PW1. PW1 is Ram Phal, Head Constable who has proved the copy of FIR. (The testimony of PW1 is at page 63 of the record of the Tribunal). I fail to understand as to how the bills, prescriptions etc are exhibited as PW1.

DRESSING CHARGES

12. Tribunal has awarded a sum of Rs.7,000/- as against Rs.20,000/- claimed by the appellant.

13. Relating to dressing charges, appellant (PW-3) had deposed as under (page 67):

> "A person namely Dr.Narinder and Mohd. Ali used to come for a period upto the December 1992. They used to charge Rs.50/- per dressing and I incurred sum of Rs.20,000/- (twenty thousand)."

14. Appellant has also placed on record four bills amounting to Rs.16,000/- issued by Dr. Narinder Nath and Mohd. Ali respectively. The same are Ex.PW1/C-86 (page no. 735), Ex.PW1/C-88 (page no. 739), Ex.PWI/C-89 (page no. 741) and Ex.PW1/C-91 (page no. 745).

15. But, testimony of appellant and bills on record cannot be treated as gospel truth. The correctness of same has to be determined taking into consideration other evidence and attendant circumstances.

16. Bills of medicines purchased by the appellant will give a clue as to the period of dressing. A perusal of bills show that appellant

had purchased following quantity of antiseptic lotion, cotton, bandage etc:

S.No	Description of Item	Date of Purchase	Exhibit No.	Page No.
1	1 bottle Betadin (500 ml)	8.3.91	PW1/C-8	171
2	1 bottle Betadin (500 ml)	22.3.91	PW1/C-11	177
3	1bottle Betadin (500 ml)	27.3.91	PW1/C-12	179
4	1 bandage	24.4.91	PW1/C-15	191
5	1 bottle Betadin (500 ml)	24.4.91	PW1/C-16	193
6	1 cotton (500 gm)	13.5.91	PW1/C-17	195
7	1 bottle Betadin (100 ml)	13.5.91	PW1/C-17	195
8	4 rolls of bandage	4.10.91	PW1/C-37	237
9	1 cotton (500 gm)	4.10.91	PW1/C-37	237
10	1 botton Savlon (75 ml)	8.10.91	PW1/C-38	239
11	1 dozen bandage	8.10.91	PW1/C-38	239
12	1 cotton (500 gm)	8.10.91	PW1/C-38	239
13	1 cotton (500 gm)	17.11.01	PW1/C-47	257
14	1 cotton (500 gm)	4.12.91	PW1/C-49	261
15	4 rolls of bandage	4.12.91	PW1/C-49	261
16	2 cotton (500 gm)	23.12.91	PW1/C-53	269

17	1 dozen bandage	31.12.91	PW1/C-56	275
18	1 cotton (500 gm)	31.12.91	PW1/C-56	275
19	1 bottle ether	6.1.92	PW3/6	281
20	1 bottle Betadin	6.1.92	PW3/6	281
21	1 cotton (250 gm)	9.1.92	PW3/9	287
22	1 cotton (500 gm)	14.2.92	PW1/C-61	303
23	1 bottle Betadin (100 ml)	4.5.92	PW1/C-64	315
24	1 cotton (500 gm)	15.5.92	PW1/C-67	321
25	1 dozen bandage	16.6.92	PW1/C-68	323

17. The afore-noted bills clearly establish that the appellant used to get his wounds dressed from March 91 to June 92. (Appellant has purchased 1 dozen of bandage in June 92, thus it could reasonably be expected that he used to get his wounds dressed even after June 92, but I am taking the period of dressing from March 91 to June 92).

18. Appellant had further deposed that he used to pay Rs.50/- per day for dressing. This statement of appellant cannot be believed. In year 1991, minimum wages of unskilled labourer was Rs.845/- per month, i.e. Rs.28/- per day. Considering that appellant himself provided antiseptic lotion, cotton and other material used for dressing, the dressing charges @ Rs.50/- per day claimed by appellant are exaggerated.

19. Noting that the dresser used to come at the residence of the appellant for dressing, I allow dressing charges @ Rs.35 per day for a period of 15 months. The same comes to Rs.15,750/-. Thus, I award a sum of Rs.15,750/- to the appellant under the head “dressing charges”.

20. Tribunal has awarded a sum of Rs.7,000/- under the head “dressing charges”. Thus, compensation under the head “dressing charges’ is enhanced by a further sum of Rs.8,750/-.

PHYSIOTHERAPY CHARGES

21. Tribunal has awarded a sum of Rs.3,420/- as against Rs.17,100/- claimed by the appellant.

22. In relation to physiotherapy exercises, appellant had deposed as under (page 67):

> “ I have to take physiotherapy exercises and I have been paying Rs100/- per sitting to Saxena. The bills issued by Dr.Saxena are filed on record.”

23. Appellant had tried to substantiate his claim by filing two bills issued by Saxena Prosthetic and Orthotic Clinic totaling Rs.17,100/-. The same are exhibited as Ex.PW1/C-89 (Page 737) and Ex.PW1/C-90 (page 743).

24. Bills relied upon the appellant merely contains the stamp of Saxena clinic. The person who has issued the said bills has not stepped into the witness-box. In fact, the name of the person who

has issued the afore-noted bills is neither discernible from bills nor from the testimony of the appellant.

25. Further, no details pertaining to physiotherapy exercises (for example, person who used give said exercises, types of exercises etc) are mentioned in the said bills. No receipt has been filed evidencing payment pursuant to the bills.

26. For the above reasons, neither testimony of appellant nor afore-noted bills clearly establish that appellant has incurred a sum of Rs17,100/- for physiotherapy exercises. Thus, I do not interfere with award made by the Tribunal under the head "Physiotherapy Charges".

EXPENDITURE INCURRED ON SERVICES OF ATTENDANT

27. Tribunal has awarded a sum of Rs.11,102/- as against Rs.35,095/- claimed by the appellant.

28. In relation to expenditure incurred on services of attendant, appellant had deposed as under:

> "I have to employ one servant namely Ramu @ Ram Prasad during the course of my hospitalization. I used to pay Rs.110/- per day to Ramu. He remained in employment for 53 days. After discharge from the hospital I had to employ servants for about 1 ½ days to look after me and to help me. I was paying Rs.70/- or 75/- per day to the servant. I had to employ the servant 1 ½ years and incurred Rs.35,000/- (thirty five thousand) on them."

29. To further substantiate his claim, appellant has filed seven bills for the period 02.03.91 to 10.4.92 (13 months) totaling to Rs.35,095/-. Amount claimed ranges between Rs.70/- per day to Rs.110/- per day. The bills are exhibited as Ex.PW1/C-1 to Ex.PW1/C-6 (Page 721 to 731).

30. Noting the afore-noted bills, Tribunal has believed that appellant had engaged attendant for a period of 13 months but has disbelieved that he was paying Rs.70/- to Rs.110/- per day to the attendant for their services.

31. Taking minimum wages notified under the Minimum Wages Act, 1948 as the guiding principle, Tribunal has awarded the compensation. In the year 1991, minimum wages payable to unskilled labourer was Rs.854/- per month, thus Tribunal has awarded a sum of Rs.11,102/- (854X13=11,102) under the said head.

32. There is no evidence wherefrom it could be inferred as to for how many hours in a day appellant required the services of the attendant.

33. In absence of clear and cogent evidence, I find no infirmity in Tribunal's decision in assessing compensation under this head on the basis of minimum wages.

34. I uphold the award of Rs.11,102/- made by the Tribunal under the head "expenditure incurred on services of attendant".

MEDICINAL EXPENSES

35. Tribunal has awarded a sum of Rs.22,387/- as against Rs.56,151.24 claimed by the appellant.

36. Appellant claimed to have filed 51 bills totaling to Rs.56,151.24. Tribunal has allowed 34 bills. Details of bills which according to appellant have been wrongly disallowed by the Tribunal are as follows:

S. No.	Description of Bill	Amount of Bill	Date of Purchase	Exhibit No.	Page No.
1	-	20,000	-	-	-
2	Medicine	6,654	28.2.91	PW1/C-13	181
3	Medicine	250	22.5.91	PW1/C-74	197
4	Medicine	380	20.6.91	-	-
5	Medicine	2,400	22.6.91	-	-
6	X-Ray	100	10.6.91	-	-
7	Surgical Appliances	2,400	20.6.91	-	-
8	Medicine	350	_.7.91	-	-
9	X-Ray	130	_.7.91	-	-
10	X-Ray	100	_.7.91	-	-
11	Medicine	100	_.9.91	-	-
12	X-Ray	100	_.9.91	-	-
13	X-Ray	160	24.12.91	-	-
14	Medicine	448	03.03.92	PW3/22	305
15	Medicine	507	06.09.92	PW3/14	339
16	Medicine	115	15.09.92	-	-
17	Medicine	75	15.9.92	-	-

37. A perusal of the above table shows that appellant had only filed 38 bills and not 51 as claimed by him. Thus, Tribunal has disallowed four bills.

38. Bill at serial no. 2 is a handwritten bill and is signed by one Sh. D.K. Singhal. Except the said bill, all other bills are issued by the medical stores. In all the bills except one bill (Amount of bill marked Ex.PW1/C-43, pg no. 649 is for Rs.6,000/-), the amount of medicines purchased by the appellant is less than Rs.1,000/-. This fact makes the bill at serial no. 2 highly exaggerated one. In my opinion, Tribunal has rightly disallowed the bill at serial no. 2 as the same does not appear to be a genuine bill.

39. Bill at serial no. 3 is an incomplete bill and thus rightly disallowed by the Tribunal.

40. I agree with the learned counsel for the appellant that bills at serial nos. 14 and 15 have been wrongly disallowed by the Tribunal. I allow the said bills and award a sum of Rs.955/- (rounded off to Rs.1000/-) under the head “Medicinal Expenses”.

EXPENSES INCURRED ON TREATMENT

41. Tribunal has allowed a sum of Rs.13,792/- as against Rs.35,795/- claimed by the appellant.

42. Tribunal has disallowed 12 bills. Details of bills disallowed by the Tribunal are as follows:

S. No.	Amount of Bill	Date of Bill	Exhibit No.	Page No.
1	265	25.5.91	PW1/C-81	649
2	265	02.6.91	PW1/C-82	651
3	265	10.6.91	PW1/C-76	653
4	265	18.6.91	PW1/C-75	655

5	236	02.8.91	PW1/C-77	673
6	238	04.9.91	PW4/22	679
7	278	17.12.91	PW1/C-78	703
8	135	04.6.92	PW1/C-79	713
9	2682	26.9.91	PW4/26	679
10	10,000	24.12.91	PW4/1	401
11	13,600	19.1.92	PW4/4	705
12	2,800	14.9.92	PW4/16	717

43. Bills at serial nos. 1 to 8 are handwritten receipts containing an acknowledgement that a sum of money is paid to Dr.H. U. Nagar. The said receipts are not signed by Dr. Nagar but by another person whose signatures cannot be identified.

44. Tribunal has disallowed the bills at serial nos. 1 to 8 for the reason said bills/receipts are not certified/proved by the person who has issued them. I agree with the decision of the Tribunal.

45. Bill at serial no. 9 is for the expenses incurred by the appellant on account of his having undergone an operation at Orthonova Hospital in September 91.

46. No reasons have been given by the Tribunal for disallowing the said bill.

47. The fact that appellant was operated upon stands corroborated by the testimony of the Dr. H. U. Nagar and appellant.

48. Dr. H.U. Nagar stepped into the witness-box as PW-4 and deposed that he had operated appellant for fusion and curetage of his infected left ankle in September 91 at Orthonova Hospital.

49. Appellant had also testified that he was operated upon by H.U. Nagar for removal of pus from his left ankle in September 91 at Orthonova Hospital.

50. In view of testimony of Dr. H. U. Nagar and appellant, I allow the bill at serial no. 9.

51. Bills at serial nos. 10, 11 and 12 are for expenses incurred by the appellant on account of his having undergone two operations at Vardhman Trauma Centre in January and September 92.

52. Bill at serial no. 10 is a prescription by Dr. Mukesh Jain. The said prescription/ bill merely contains an entry of Rs.10,000/-. The same does not show that a sum of Rs.10,000/- was paid by the appellant. Thus, I disallow the bill/prescription at serial no. 10.

53. In relation to bills at serial no. 11 and 12, Dr. Mukesh Jain stepped into the witness as PW-4 and deposed that he had twice operated appellant in January and September 92 respectively at Vardhman Trauma Centre.

54. But, the afore-noted bills and testimony of Dr. Mukesh Jain are not corroborated by the testimony of the appellant.

55. In his testimony, appellant had testified that he was operated upon four times. He further deposed that the first two operations were conducted at LNJP Hospital on 28.2.91 and last week of April 91 respectively. He deposed that third and fourth operations were

conducted at Batra and Orthonova Hospital in June and September 91 respectively.

56. The fact that appellant was operated upon twice by Dr. Mukesh Jain in month of January and September 92 at Vardhman Trauma Centre does not find a mention in the testimony of appellant. No explanation is forthcoming as to why appellant has not mentioned about the said two operations in his testimony.

57. Noting the testimony of the appellant, I disallow the bills at serial nos. 11 and 12.

58. The net effect is that I award a sum of Rs.2,682/- to the appellant under the head “expenses incurred on treatment”.

CONVEYANCE CHARGES

59. Tribunal has allowed a sum of Rs.3,400/- as against Rs. 36,247/- claimed by the appellant.

60. Appellant had stated that he was being treated by Dr. Mukesh Jain who was practising at Vardhman Trauma Centre, Muzaffar Nagar, U.P. and thus claimed conveyance charges for traveling from Delhi to Muzaffar Nagar but the same were disallowed by the Tribunal on the premise that Delhi has better medical facilities than Muzaffar Nagar.

61. In my opinion, Tribunal has wrongly disallowed the same for the reason testimony of Dr. Mukesh Jain and appellant, prescriptions issued by Dr. Mukesh Jain and bills of medicines purchased by the

appellant clearly establish that appellant was being treated by Dr. Mukesh Jain.

62. I consider it reasonable to allow a further sum of Rs.2,500/- to the appellant under the head “conveyance charges”.

LOSS OF INCOME

63. Tribunal has awarded a sum of Rs.1,50,000/- as against Rs.2,50,000/- claimed by the appellant.

64. Appellant had deposed that his monthly income was Rs.5,000/- at the time of the accident and he could not attend to his business for a period of 2 ½ years on account of the injuries suffered in the accident. Relying on the testimony of the appellant, a sum of Rs. 1,50,000/- has been awarded by the Tribunal.(5,000X 30 months = Rs. 1,50,000/-).

65. It is not clear as on what basis appellant had claimed a sum of Rs.2,50,000/- under the head “loss of income”. In fact, the award of the Tribunal is on the higher side as the evidence on record suggests that appellant was undergoing treatment for a period of 20 months and not 30 months as claimed by the appellant. More so when income was from a shop and it could be presumed that during period of treatment somebody was running the shop.

66. I maintain the award of Rs. 1,50,000/- made by the Tribunal under the head “loss of income”.

FUTURE LOSS

67. Tribunal has awarded a sum of Rs.1,50,000/- under this head.

68. As per disability certificate (Ex. PW1/D, pg 899) appellant has suffered a permanent disability of 55%. Tribunal has assessed functional disability suffered by the appellant as 40% and on this basis awarded a compensation of Rs.1,50,000/- to the appellant.

69. Learned counsel for the appellant contends that while determining compensation under this head Tribunal has not taken into account the fact that the appellant will have to incur expenses on his future treatment.

70. Tribunal has not specified as on what basis it has arrived at a compensation of Rs.1,50,000/-. It appears taking monthly income of the appellant at the time of the accident as Rs.5,000/- and applying multiplier of 6, Tribunal has awarded a sum of Rs.1,50,000/- to the appellant. (Rs.5,000/-X12X6X40% = Rs.1,44,000/-; rounded off to Rs.1,50,000/-.)

71. On the future loss, noting that the appellant was running a sarees shop, I do not think that any meaningful future loss has surfaced. The nature of permanent disability, in my opinion, is not of a kind which would affect the avocation of the appellant. In my opinion, a sum of Rs.1,50,000/- awarded by the Tribunal is adequate.

NON- PECUNIARY DAMAGES

72. Tribunal has awarded a sum of Rs.50,000/- under the head “non-pecuniary damages”. Tribunal has awarded Rs.50,000/- for pain and suffering. No amount has been awarded towards loss of amenities of life.

73. No amount of money can recompense a person the loss of enjoyment of pleasures of life.

74. Every disability takes away some pleasure of life or the other. There cannot be an absolute measure to compensate a non pecuniary loss. But, some guidance can be had from the extent of injury and the period of hospitalization coupled with the disability suffered.

75. I look at various judicial trends which are as under:

(1) *Amar Singh v. Ishwar* 1999 ACJ 809, Supreme Court awarded compensation of Rs. 1,00,000/- under the head 'pain, shock and suffering' to an injured who suffered 30% permanent disability and remained in hospital for a period of more than 3 years though intermittently on account of injuries sustained by him in a road accident.

(2) *Dr.(Ms.) K.R. Tandon v. Om Prakash and Anr.* 1999 ACJ 1299, Supreme Court awarded a compensation of Rs. 1,00,000/- under the head 'non pecuniary loss' to an injured who sustained injuries of ribs, spine and hip-joint in a road accident.

(3) *Ahmedabad Municipal Transport Corporation v. Hansa Ben Natwarlal Dabgar and Ors.* 2003 ACJ 642 due to accident which took place on 13.9.1991 Hansaben, a cook sustained a fracture in her right leg. The fracture mal-united resulting in shortening of right lower limb and thus she suffered permanent partial disablement to the extent of 38%. She was hospitalized for a period of 10 days. The Division Bench of Gujarat High Court awarded a compensation of Rs. 50,000/- to the injured under the head 'pain, shock and suffering'

(4) *Miss Ragini Raju and Ors.* 2002 (2) T.A.C. 710 (Delhi) on 25.10.1995, a girl aged 13 years sustained serious injuries in a road accident while crossing the road. On account of injuries sustained in the accident, her left lower limb was shortened by 3 cm and her left hip was also deformed. She also sustained a fracture of her left femur, tibia and fibula. She remained in hospital for a period of 41/2 months. A learned Single Judge of this Court awarded a sum of Rs. 50,000/- to the injured under the head 'pain and suffering'.

(5) *R.D. Hattangadi v. Pest Control (India) Pvt. Ltd. and Ors.* 1995 ACJ 366, on account of accident which took place on 20.5.1980, appellant aged 52 years suffered

serious injuries resulting in 100% disability and a paraplegia below the waist, Supreme Court awarded a sum of Rs. 6,00,000/- under the heads 'pain and suffering' and 'loss of amenities of life'.

76. In the instant case, I have before me the evidence that the appellant was operated upon four times. I also have evidence that appellant was under treatment for a period of 20 months.

77. I also have before me the evidence that the right leg of the appellant was shortened by one inch and that he has suffered a permanent disability of 55%.

78. From the judicial trends it is evident that in the instant case there is inadequacy in the compensation awarded towards non-pecuniary damages.

79. On account of loss amenities and loss of the pleasures of the life, noting the permanent disability suffered by the appellant, I award him compensation in sum of Rs.35,000/-.

ENHANCED COMPENSATION

80. Net effect is that the compensation stands enhanced by a sum of Rs.49,432/-(rounded off to Rs.50,000/-). Break-up of the enhanced compensation is as follows:

i) Dressing Charges Rs.8,750/-

ii) Medicinal Expenses Rs.1,000/-

iii) Treatment Expenses Rs.2,682/-

iv) Conveyance Charges Rs.2,500/-

v) Loss of amenities of life Rs.35,000/-

Total Rs.49,932/-

81. The appeal accordingly stands disposed of enhancing the compensation by sum of Rs. 50,000/-.

82. The enhanced compensation in sum of Rs. 50,000/- shall be paid to the appellant together with interest @6% per annum from date of claim petition till date of payment.

83. No costs.

84. LCR be returned.

APRIL 17, 2007 PRADEEP NANDRAJOG, J.

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